

1 **IN THE UNITED STATES DISTRICT COURT**

2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 UNITED STATES OF AMERICA,) CASE NO. 17-CR-075 (FAB)
5 Plaintiff,)
6 vs.)
7 ANGEL RAFAEL CONTRERAS-DELGADO,) SENTENCING HEARING
8 Defendant.)
9

10 TRANSCRIPT OF SENTENCING HEARING
11 HELD BEFORE THE HONORABLE JUDGE FRANCISCO A. BESOSA
12 SAN JUAN, PUERTO RICO
13 Tuesday, August 8, 2017

14 APPEARANCES:

15 For the United States:

16 MARC S. CHATTAH, AUSA
17 United States Attorney's Office
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19 350 Carlos Chardón Street
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21 For the Defendant:

22 JUAN J. MICHELEN, AFD
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transcription

Joe Reynosa, CSR, RPR
Official Court Reporter

1 (PROCEEDINGS COMMENCED AT 9:30 A.M.)

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3 THE CLERK: Criminal Case No. 17-075, United States
4 of America versus Angel Rafael Contreras-Delgado for
5 Sentencing Hearing.

6 On behalf of the Government, Assistant United
7 States Attorney Marc S. Chattah.

8 On behalf of the Defendant, Assistant Federal
9 Public Defender Juan J. Michelen.

10 Defendant is present and assisted by the certified
11 court interpreter.

12 MR. MICHELEN: Your Honor, good morning.

13 MR. CHATTAH: Good morning, Your Honor. The United
14 States is ready to proceed.

15 THE COURT: Thank you for your sentencing
16 memorandum.

17 MR. MICHELEN: You are welcomed, Your Honor.

18 THE COURT: Is there anything you would like to say
19 on behalf of Mr. Contreras --

20 MR. MICHELEN: Yes, Your Honor.

21 THE COURT: -- or highlight anything from your
22 sentencing memorandum?

23 MR. MICHELEN: Your Honor, I turned over to the
24 Government and the probation office Dr. Alexander Ramos'
25 report and evaluation. She is present. I would like to

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1 briefly present her, her testimony.

2 MR. CHATTAH: Your Honor, we would stipulate. I am
3 assuming she is going to testify in accordance with her
4 report.

5 THE COURT: Let me see the report.

6 (Whereupon, a document was handed to the Court by
7 Defense Counsel.)

8 THE COURT: Basically, what Ms. Ramos indicates is
9 that, "It's recommended that Mr. Contreras receive substance
10 abuse treatment to address his problems with addiction and to
11 prevent relapses." That's her recommendation.

12 MR. MICHELEN: It is. I wanted to --

13 THE COURT: Will you stipulate to that?

14 MR. CHATTAH: I will stipulate to that, Your Honor.

15 THE COURT: Ms. Perez, would you stipulate to that?

16 THE PROBATION OFFICER: Yes, Your Honor. The
17 information will be included in the PSR.

18 THE COURT: Okay. Very good. Thank you.

19 There is no need to present Ms. Ramos.

20 What would like to say --

21 Do you have this, Ms. Perez?

22 THE PROBATION OFFICER: Yes. It was provided to
23 me, Your Honor.

24 THE COURT: Please, let's make a change in the PSR
25 to add this report, Psycho Diagnostic Assessment Report, by

1 Alexandra Ramos-Duchateau, clinical psychologist. And we
2 will include, as one of the conditions, mental health
3 treatment.

4 THE PROBATION OFFICER: Yes, Your Honor.

5 MR. MICHELEN: Thank you.

6 Your Honor, one of the other points I was hoping
7 Dr. Ramos's testimony could highlight is the different
8 factors that would go into -- should be used to analyze
9 whether or not --

10 THE COURT: That is something that the probation
11 officer will take care of when the person is on -- when
12 Mr. Contreras is on supervised release. They will make their
13 own determination as to what type of treatment is to be done.
14 Same thing by the BOP.

15 MR. MICHELEN: Sure.

16 Your Honor, so --

17 THE COURT: And the pre-sentence report will have
18 that. So the BOP will see it.

19 MR. MICHELEN: Of course.

20 Your Honor, what I would want to highlight from the
21 sentencing memo is the idea that because of
22 Mr. Contreras-Delgado's age, a prolonged sentence of
23 imprisonment may not actually contribute to his
24 rehabilitation and to his --

25 THE COURT: That's not what Ms. Ramos says.

1 Ms. Ramos says that he is in remission because of his
2 incarceration.

3 MR. MICHELEN: Right.

4 Well, Your Honor, I believe her testimony, if she
5 were to testify, would have in part been that it is not just
6 about the actual treatment someone receives, but it's about
7 all the environmental factors that go into what would help
8 someone rehabilitate. So someone of his age, there does come
9 a point, Your Honor, where the sentence of imprisonment is --
10 after a certain length, it's not really helping anyone. And
11 if anything, it could start to hurt someone and start to
12 negatively impact his progress and his rehabilitation.

13 Based on that, Your Honor, based on the sentencing
14 memo I filed and based on the idea that his criminal history
15 is nonexistent in terms of at least as an adult, and the risk
16 of reoffending is low, what he needs, Your Honor, is -- and I
17 believe Dr. Ramos would have testified to that effect, that
18 it's not -- with Angel, it's not really about whether he has
19 violent tendencies or he is at risk of necessarily
20 reoffending. It's about not having the proper treatment and
21 support.

22 And, Your Honor, as my report highlighted, when he
23 does receive the proper treatment, Your Honor, when he is at
24 rehabilitation centers, when he is receiving support from his
25 family, when he is going to school consistently, he does

1 thrive. His grades do improve. The reports from the
2 different places show that he does well in a kind of
3 controlled environment, where there is discipline for him --
4 there is it discipline on him.

5 So this idea that he needs treatment -- of course
6 he does. Whether or not the entire time it needs to be
7 incarcerated, I would argue it doesn't, Your Honor.

8 So, because of that, that is why I recommended and
9 I ask the Court to consider departing and offering -- and
10 sentencing him to part incarceration and part home
11 confinement where he can --

12 THE COURT: Split sentence?

13 THE PROBATION OFFICER: If I may, Your Honor.

14 At this time, Defendant is at Criminal history
15 category 17. Section D of the guidelines does not allow
16 split sentences. In this case it would have to be pursuant
17 to a variance at your discretion, Your Honor.

18 THE COURT: Okay.

19 MR. MICHELEN: And Your Honor could do that.
20 Your Honor could make that determination where he would not
21 be incarcerated more than he needs to be. And we could
22 ensure that he is rehabilitated, and he is at least set up,
23 Your Honor, in the best position to move forward and be
24 successful. He is way too young to be in this element for
25 such a prolonged period of time.

1 So that's what we are asking the Court to consider
2 doing.

3 Thank you.

4 THE COURT: Mr. Chattah.

5 MR. CHATTAH: Your Honor, I would agree with most
6 of what the Defense proposes in the sense that he does do
7 well under a controlled environment, and the Bureau of
8 Prisons does provide a controlled environment. And he would
9 do well with mental health and substance abuse treatment, all
10 which could be provided by the Bureau of Prisons.

11 So everything that the Defense requests -- or a lot
12 of the results could be accomplished if you were to sentence
13 him within his guidelines at the Bureau of Prisons.

14 THE COURT: Well, I can't sentence him just for him
15 to get treatment. That the Supreme Court has said that I
16 cannot do.

17 MR. CHATTAH: That I understand.

18 But you should also consider the facts of this case
19 where he did have a machine gun in his waist. And you can
20 also look -- even though he does have no prior criminal
21 history points, he does have prior contacts with the system
22 where he threatens his mother and other people with knives.
23 And that's something you should take into consideration.

24 Again, Your Honor, I would recommend to the Court
25 that you sentence him within his guidelines and not to vary.

1 THE COURT: Any sentence within the guidelines, or
2 any particular sentence within the guidelines?

3 MR. CHATTAH: Judge, no particular sentence. Just
4 within the guidelines, I think would be appropriate.

5 Thank you.

6 THE COURT: Mr. Contreras, is there anything you
7 would like to say?

8 DEFENDANT CONTRERAS-DELGADO: Well, I would like to
9 thank you and to tell you that I am very repentant for what I
10 did. This served me as a lesson to be able to finish with my
11 studies and appreciate my family. And the truth is that I
12 want to tell you that I am very repentant for what I did, and
13 I want to say I am sorry to you, Your Honor.

14 THE COURT: On April 20, 2017, Defendant Angel
15 Rafael Contreras-Delgado pled guilty to the indictment in
16 Criminal Case No. 17-075, which charges a violation of
17 Title 18, United States Code section 922(o), illegal
18 possession of a machine gun, which is a class C felony.

19 The November 1st 2016 Edition of the Sentencing
20 Guidelines Manual has been used to calculate the guideline
21 adjustments pursuant to the provisions of guideline section
22 1B1.11(a).

23 Based on the provisions of guideline section
24 2K2.1(a)(4)(B), a base offense level of 20 has been
25 determined because Mr. Contreras was convicted of possessing

1 a machine gun, which is a firearm described in Title 26,
2 United States Code section 5845(a); specifically, a 9mm,
3 Model 17, Glock pistol, serial number EZU785US, modified to
4 shoot automatic, and he was a prohibited person, a drug user,
5 at the time he committed the offense.

6 Because Mr. Contreras timely accepted
7 responsibility for his offense, however, the offense level is
8 reduced by three levels pursuant to guideline sections
9 3E1.1(a) and 3E1.1(b).

10 There are no other applicable guideline
11 adjustments.

12 His total offense level is 17.

13 Mr. Contreras has two prior juvenile adjudications.

14 In 2005, at the age of 10, he was charged with
15 violation of Article 153 of the Puerto Rico Penal Code and
16 Article 5.05 of the Puerto Rico Weapons Law at the Bayamón
17 Superior Court Juvenile Affairs.

18 He threatened underaged children with a knife,
19 actually threatening to kill them, and he was sentenced to a
20 diversion program.

21 In 2011, at the age of 16, he was charged with
22 violation of Article 188 of the Puerto Rico Penal Code and of
23 Article 193, illegal appropriation, also by the Bayamón
24 Superior Court Juvenile Affairs.

25 He threatened his mother -- threatened to kill his

1 mother and stole items that belonged to her. He was
2 sentenced to 12 months' probation under the custody of the
3 Department of Family.

4 These juvenile offenses did not result in criminal
5 history points pursuant to sentencing guideline section
6 4A1.2(e)(3).

7 Mr. Contreras was also arrested in 2014 for a
8 controlled substance offense, but the case was dismissed
9 pursuant to the Puerto Rico Speedy Trial Act.

10 As usual, in the local justice system, he was not
11 charged again.

12 Accordingly, Mr. Contreras does not have any
13 criminal history points, and his Criminal History Category
14 is I.

15 Based on a total offense level of 17 and a Criminal
16 History Category of I, the guideline imprisonment range for
17 Mr. Contreras' offense is from 24 to 30 months.

18 There is a fine range of \$10,000 to \$95,000, plus a
19 supervised release term of at least one and up to three
20 years.

21 The probation officer has correctly adjusted the
22 guideline computations, and the pre-sentence investigation
23 report satisfactorily reflects the components of
24 Mr. Contreras' offense by considering its nature and
25 circumstances.

1 The Court has also considered the other sentencing
2 factors set forth in Title 18, United States Code
3 section 3553(a).

4 Mr. Contreras is 23 years old. He has an eleventh
5 grade education, was employed washing cars prior to his
6 arrest for his offense, and he has a history of using
7 marijuana.

8 Today, Mr. Contreras has requested a split
9 sentence.

10 Mr. Michelen, you are requesting a split sentence
11 of how many months?

12 MR. MICHELEN: Your Honor, I would ask a sentence
13 of 12 months incarceration, 12 months --

14 THE COURT: Split sentence of 12 months
15 incarceration and 12 months home incarceration.

16 The Government has argued for any sentence within
17 the guideline range.

18 The Court has considered Mr. Contreras' personal
19 characteristics, as well as the nature of the offense. The
20 Court has also considered that the automatic pistol which
21 Mr. Contreras possessed was loaded with a 31-round high
22 capacity magazine, and there was an additional 31-capacity
23 magazine loaded with 9mm ammunition. A 17-round high
24 capacity magazine loaded with 15 rounds of 9mm ammunition was
25 also in Mr. Contreras' possession.

1 Mr. Contreras told the arresting agents that he
2 knew the pistol was fully automatic and that he had
3 specifically requested that specification when he purchased
4 the Glock pistol. He also stated that he possessed the
5 weapon for protection, and admitted that he sold drugs.

6 This is not Mr. Contreras' first brush with the
7 law. And as the pre-sentence investigation report reflects,
8 he has benefited from probation and programs offered by the
9 Commonwealth of Puerto Rico and the Court of Juvenile
10 Affairs.

11 These facts, in conjunction with the Defendant's
12 prior criminal history, which involved repeated acts of
13 violent behavior, as mentioned before, including threatening
14 children with a knife and threatening -- threatening to kill
15 children with a knife and threatening to kill his mother, and
16 also being arrested for possession with intent to distribute
17 marijuana and cocaine, move the Court to impart a sentence
18 above the guideline range.

19 In that sense, the Court is agreeing with the
20 probation officer.

21 The Court finds that a sentence above the guideline
22 range reflects the seriousness of the offense, promotes
23 respect for the law, protects the public from further crimes
24 by Mr. Contreras, and addresses the issues of deterrence and
25 punishment.

1 Accordingly, it's the judgment of the Court that
2 Angel Rafael Contreras-Delgado is committed to the custody of
3 the Bureau of Prisons to be imprisoned for a term of
4 46 months.

5 Upon release from confinement, Mr. Contreras shall
6 be placed on supervised release for a term of three years to
7 be served under the following terms and conditions:

8 He shall observe the standard conditions of
9 supervised release recommended by the United States
10 Sentencing Commission and adopted by this Court.

11 He shall not commit another Federal, State or local
12 crime.

13 He shall not possess firearms, destructive devices
14 or other dangerous weapons.

15 He shall complete his high school education and
16 shall participate in vocational training and a job placement
17 program as recommended by the probation officer.

18 He shall provide the probation officer access to
19 any financial information upon request.

20 He shall remain under curfew at his residence of
21 record from 6:00 p.m. to 6:00 a.m. for a period of six
22 months, to commence upon his release from imprisonment.

23 During this time, he shall remain in his residence
24 except for employment or other activities approved in advance
25 by the probation officer.

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1 He shall wear an electronic device 24 hours a day
2 and shall observe the rules specified by the probation
3 officer.

4 He is ordered to pay the daily cost of the
5 electronic monitoring device.

6 Payment shall be based on his ability to pay or the
7 availability of payments by third parties.

8 In addition to any other telephone or cell phone he
9 may have, Mr. Contreras shall maintain a telephone at his
10 residence without a modem, an answering machine, or a
11 cordless feature during the term of electronic monitoring.

12 He shall cooperate in the collection of a DNA
13 sample as directed by the probation officer pursuant to the
14 revised DNA collection requirements and Title 18, United
15 States Code section 3563(a)(9).

16 He shall submit himself and his property, house,
17 residence, vehicles, papers and effects, computers and other
18 electronic communication or data storage devices or media to
19 a search at any time, with or without a warrant, by the
20 probation officer and, if necessary, with the assistance of
21 any other law enforcement officer, but only in the lawful
22 discharge of the supervision functions of the probation
23 officer, who must have a reasonable suspicion of unlawful
24 conduct or of a violation of a condition of supervised
25 release.

1 The probation officer may seize any electronic
2 communication or electronic device or medium, which will be
3 subject to further forensic investigation or analysis.

4 Failure to permit a search and seizure may be
5 grounds for revocation of supervised release.

6 Mr. Contreras shall warn any other resident or
7 occupant that his premises may be subject to searches
8 pursuant to this condition.

9 He shall not possess or use controlled substances
10 unlawfully and shall submit to a drug test within 15 days of
11 release from imprisonment.

12 After his release, Mr. Contreras shall submit to
13 random drug testing, not less than three samples during the
14 supervision period, but not more than 104 samples each year,
15 in accordance with the Drug Aftercare Program Policy of the
16 United States Probation Office, as has been approved by this
17 Court.

18 If the illegal use of controlled substances is
19 detected in any sample, Mr. Contreras shall participate in an
20 inpatient or an outpatient substance abuse treatment program
21 for evaluation or treatment as arranged by the probation
22 officer.

23 Payment shall be based on his ability to pay or the
24 availability of payments by third parties as approved by the
25 Court.

1 He shall participate in an approved mental health
2 treatment program for evaluation and to determine if
3 treatment is necessary.

4 If deemed necessary, the treatment will be arranged
5 by the probation officer in consultation with the treatment
6 provider.

7 The modality, duration and intensity of treatment
8 will be based on the risks and needs identified.

9 Mr. Contreras will contribute to the cost of those
10 services based on his ability to pay or the availability of
11 payments by third parties.

12 Having considered Mr. Contreras' financial
13 condition, a fine is not imposed.

14 A special monetary assessment in the amount of \$100
15 is imposed, however, as required by law.

16 Mr. Contreras, you have the right to appeal your
17 conviction and sentence.

18 A notice of appeal must be filed in this court
19 within 14 days from when the judgment of the Court will be
20 entered.

21 You have a right to apply for leave to appeal
22 *in forma pauperis* if you are unable to pay the cost of an
23 appeal.

24 Because you are represented by court-appointed
25 counsel, he will continue to represent you through any appeal

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1 unless a substitute counsel is later appointed.

2 Anything else?

3 MR. MICHELEN: Yes, Your Honor.

4 We would ask you to reconsider going above the
5 guidelines, and we would object to the Court going above the
6 guidelines in this case.

7 THE COURT: Denied.

8 Anything else?

9 MR. MICHELEN: Yes.

10 We would argue, Your Honor, that there is nothing
11 unique about this case that would warrant going above the
12 guidelines. This is your run-of-the-mill case that we see
13 here in Puerto Rico, and that's what the sentencing
14 guidelines are for.

15 Thank you.

16 THE COURT: Is there any particular place you would
17 like me to recommend?

18 MR. MICHELEN: Yes, Your Honor.

19 We would like to remind the Court about the motion
20 we filed earlier on in this case regarding his medical
21 condition, and we would ask the Court to ensure that if the
22 marshals are going to put him on a plane, that they make sure
23 he undergoes a physical evaluation.

24 THE COURT: Any particular designation you would
25 like me to make?

1 MR. MICHELEN: We would ask Your Honor to send
2 him -- to recommend the Tampa, Orlando area where he has
3 family.

4 THE COURT: I will recommend that Mr. Contreras be
5 designated to the Coleman facility in Orlando and that the
6 BOP provide the medical services that he needs.

7 Anything else?

8 MR. MICHELEN: Thank you, Your Honor.

9 THE COURT: You are excused.

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11 (PROCEEDINGS ADJOURNED AT 9:50 A.M.)

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3 REPORTER'S CERTIFICATE
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I, JOE REYNOSA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer-aided transcript of proceedings had in the within-entitled and numbered cause on the date herein set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

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17 S/Joe Reynosa
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